

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7554

BILL NUMBER: SB 580

NOTE PREPARED: Jan 13, 2009

BILL AMENDED:

SUBJECT: Unauthorized Alien Matters.

FIRST AUTHOR: Sen. Delph

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

STATE IMPACT	FY 2009	FY 2010	FY 2011
State Revenues			
State Expenditures		1,000,000	1,000,000
Net Increase (Decrease)		(1,000,000)	(1,000,000)

Summary of Legislation: *Appropriation:* This bill appropriates \$500,000 to the Department of Labor (DOL) and \$500,000 to the Attorney General from the state General Fund for each year of the biennium beginning July 1, 2009, and ending June 30, 2011.

Department of Corrections: This bill requires the Department of Correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions.

Flight Risk in the Establishment of Bail: The bill provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail.

Unemployment Insurance: The bill also requires an individual filing a claim for unemployment insurance to provide certain information in person to the Department of Workforce Development.

Employment Provisions: This bill prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. The bill also establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements in any state proceedings.

Attorney General: It also authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the Department of Labor under certain conditions; and (4) maintain certain records of violation orders.

Department of Labor: This bill requires the DOL to initiate administrative proceedings against an employer for knowingly hiring an unauthorized alien. The bill prohibits DOL from initiating a proceeding against an employer that verifies the employment authorization of an employee through the E-Verify program.

Save Haven Policies: The bill prohibits a governmental body from enacting an ordinance, a resolution, a rule, or a policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. It also allows a person to bring an action to compel a governmental body to comply with the prohibition.

Public Employment: The bill requires a state agency or political subdivision to verify employees through the E-Verify program.

Contracting Provisions: This bill prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor unless the contract requires the contractor to verify employees through the E-Verify program. It also provides that: (1) a state agency or political subdivision may terminate a public contract for services under certain conditions regarding the knowing employment or retention of unauthorized aliens; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. The bill allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

Penalty Provisions: This bill makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the Attorney General or DOL. The bill increases penalties and establishes additional penalties for certain crimes. It makes committing false identity statement a Class A misdemeanor. This bill makes the following penalty provisions: (1) making or distributing a forged instrument a Class C felony, (2) a Class C felony for a person to knowingly or intentionally make, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government-issued identification. The bill also makes it a: (1) Class A misdemeanor to knowingly or intentionally transport or move; and (2) Class A misdemeanor to knowingly or intentionally conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Department of Correction (DOC):* The bill requires DOC staff to verify the legal presence of all individuals incarcerated in DOC facilities and contact the U.S. Department of Homeland Security if DOC is unable to verify an individual's citizenship status. Additionally, the bill requires DOC to work with the U.S. Department of Homeland Security in deporting committed offenders who are

unlawfully present in the United States. This bill will increase the workload of DOC in order to work with the U.S. Department of Homeland Security to deport criminal unauthorized aliens.

Currently, DOC verifies the legal status of offenders committed to their facilities by asking them an extensive list of questions in interview format. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC reports that they currently notify U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when a determination has been made that an offender is illegally present in the United States.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions. [DOC reverted \$261,000 to the General Fund at the end of FY 2008.]

Public Employer and Public Contractor Provision: This legislation affects public employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor or subcontractor use the E-Verify system as a condition of receiving a contract award. Requiring contracted employers to use verification systems may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. Increases in contracting expenses to the state are indeterminable.

This bill states that contractors are liable to the contract-issuing state agency or political subdivision for any damages that may result of a contract cancellation due to the illegal employment of unauthorized aliens. This provision will minimize any increase in expenditures that may result from the cancellation of a contract. To the extent that a contractor challenges the contract cancellation, the workload of the respective state agency and the Attorney General may increase to defend the state.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure that all employees hired after the effective date are processed through the system. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Department of Workforce Development (DWD): Under current law, unauthorized aliens are not entitled to receive unemployment benefits. The bill requires individuals who apply for unemployment benefits to submit approved documents to DWD in person. The bill may decrease expenses paid from the Unemployment Insurance Benefit Fund to the extent unauthorized aliens no longer apply for and receive benefits. The bill may also decrease applications submitted to DWD for unemployment benefits and processing time to the extent that individuals lack documents necessary to apply for benefits.

Currently, individuals can apply for unemployment benefits online or in person. The legislation will require all individuals wishing to file an initial claim to provide information in person. As a result, DWD may experience an increase in the number of applications submitted in person at WorkOne sites. Additionally, DWD's online submission website, Uplink Claimant Self Service for Unemployment Benefits (Uplink), may experience

decreases in online submissions. DWD may require additional staff to process benefit applications in person and may require additional resources to provide staffing depending on the increase in applications that are submitted in person rather than online.

Office of the Attorney General (AG): [Note: The provisions affecting the employment of unauthorized aliens has an effective date of October 1, 2009.] The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or ICE. Consequently, the bill would potentially place several additional administrative responsibilities on the AG.

This bill allows the AG to investigate complaints made against employers who are suspected of employing unauthorized aliens. The bill also requires the AG to forward any instances of employers utilizing unauthorized aliens to ICE and allows the AG to notify local law enforcement as well as the prosecuting attorney in the county of jurisdiction of the offense.

The AG reports that it is expected that there would be a large volume of complaints filed with their office that would be diligently investigated. The AG estimates that the provisions of this bill will require at least a minimum expenditure of \$250,000 per fiscal year in order to provide salary and benefits for one staff attorney, one investigator, and one complaint analyst along with associated expenses and overhead costs. This bill appropriates \$500,000 per fiscal year to the AG in order to enforce the requirements contained in the legislation. Total state appropriations to the AG under the bill are \$1 M for the biennium.

Department of Labor: [Note: The provisions affecting the employment of unauthorized aliens has an effective date of October 1, 2009.] This bill authorizes DOL to initiate proceedings against employers whom the Attorney General determines has illegally employed unauthorized aliens. DOL reports that in order to initiate proceedings against violating employers, additional resources will be required to employ an adequate number of administrative law judges (ALJ) to hear and decide unauthorized alien employment cases. DOL currently has no vacant positions, so in order to hear and decide unauthorized alien employment cases, the DOL estimates requiring a court reporter and other administrative expenses. DOL reports a cost of approximately \$60,000 per ALJ and approximately \$40,000 per court reporter. However, the necessary number of ALJs and court reporters is indeterminable given the unknown caseload the legislation will create. Additionally, DOL was unable to provide a per year cost estimate for administrative expenses because of unknown variables involving caseload. Expenses will depend on the implementation decisions of DOL administrators.

The bill requires DOL to utilize the Systematic Alien Verification for Entitlements (SAVE) for individuals who apply for unemployment benefits. Fees are charged to entities that request verification with the SAVE program. Effective October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically, with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form. In 2007, Indiana had approximately 146,000 individuals who were considered unemployed. Assuming all these individuals applied for unemployment benefits, the state would experience verification expenses of approximately \$73,000 per fiscal year.

The bill appropriates \$500,000 per fiscal year to DOL in order to enforce the requirements contained in the legislation. Total state appropriations to DOL under the bill are \$1 M for the biennium.

State Employment Applicability: The bill requires state agencies to utilize the E-Verify program to verify the

work eligibility status of all state agency employees hired during FY 2010. This bill will increase the workload of all state agencies to submit information for verification through E-Verify.

Penalty Provisions: The bill makes the following changes to penalty provisions in current law:

- (1) Counterfeiting or falsely reproducing a driving license with the intent to misrepresent citizenship or immigration status, a Class C felony.
- (2) Filing a false or frivolous complaint with the AG or the DOL, a Class B misdemeanor.
- (3) Knowingly or intentionally offering in writing, accepting, or recording a consular identification for any public purpose commits a Class C infraction, but this offense can be a Class B infraction for a second offense or a Class A infraction for a third or subsequent offense.
- (4) Knowingly or intentionally offering in writing, accepting, or recording an individual taxpayer identification number as a valid form of identification commits a Class C infraction for the first offense, a Class B infraction for a second offense, or a Class A infraction for a third or subsequent offense.
- (5) Making or distributing a forged instrument, a Class C felony.
- (6) Knowingly or intentionally making a false government document, a Class D felony.
- (7) Knowingly or intentionally making a false government document with the intent to distribute, a Class C felony.
- (8) False identity statement, a Class A misdemeanor.
- (9) Transporting an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.
- (10) Harboring an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.

Additionally, the bill adds that persons who uses false or fictitious information also commit terroristic deception. The bill changes the penalty for terroristic deception from a Class C felony to a Class B felony. It should be noted that state expenditures would increase if an offender is incarcerated in a state prison for a longer period of time due to the penalty enhancements for this offense.

Depending on mitigating and aggravating circumstances, these offenses carry the following penalties: (1) a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, (2) a Class C felony is punishable by a prison term ranging from 2 to 8 years, and (3) a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average length of stay in DOC facilities by offense are as follows: (1) Class D felony offenders, approximately 10 months, (2) Class C felony offenders, approximately 2 years, (3) Class B felony offenders, approximately 3.7 years.

Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Background Information: DOC reports there were an estimated 475 unauthorized aliens in DOC facilities in FY 2008. The per diem cost to house these individuals was calculated at \$52.61. Total annual costs to DOC to house unauthorized aliens during FY 2008 were approximately \$9.1 M.

Explanation of State Revenues: *Court Fee Revenue:* To the extent that contractors and subcontractors feel that their contracts have been wrongfully terminated, additional civil actions may be filed. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee

of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Judgments for infractions are deposited into the state General Fund.

The maximum fines by offense are as follows: (1) a Class A misdemeanor is \$5,000, (2) a Class B misdemeanor is \$1,000, (3) Class B, C, and D felonies are \$10,000, (4) a Class C infraction is \$500, (5) a Class B infraction is \$1,000, and (6) a Class A infraction is \$10,000.

Explanation of Local Expenditures: *Public Employer and Public Contractor Provision:* (See also *Explanation of State Expenditures*, above.) Additionally, to the extent that contractors and subcontractors feel a contract was wrongfully terminated and seek civil redress, local expenditures would increase to defend their interests in court.

Political Subdivision Employment Applicability: The bill requires political subdivisions to utilize the E-Verify program to verify the work eligibility status of all employees hired during FY 2010. This bill will increase the workload of all local units to submit information for verification through E-Verify.

Employment Provisions: Local expenditures may increase to the extent that local law enforcement agencies take action against employers who the Attorney General determines has employed unauthorized aliens. Increases in local expenditures will depend on local law enforcement decisions.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail and a Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

Explanation of Local Revenues: This bill requires the Attorney General to inform local law enforcement when an employer has been found to employ unauthorized aliens. If local law enforcement agencies arrest unauthorized aliens as a result of receiving this information, local revenue may increase under the State Criminal Alien Assistance Program (SCAAP). Under SCAAP, the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund.

Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the

following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees.

Background Information: The counties that received payments from the SCAAP program in FFY 2008 and the total amounts received are shown in Table A.

Table A: 2008 County SCAAP Awards.	
County	Amount Received
Allen	\$22,220
Grant	\$4,375
Blackford	\$1,733
Hamilton	\$31,615
Noble	\$10,825
Johnson	\$4,071
Hendricks	\$9,557
Cass	\$15,808
Porter	\$1,491
Marion	\$94,637
Total	\$196,332

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; John Ruckelshaus, DWD.

Fiscal Analyst: Bill Brumbach, 232-9559.